



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

August 8, 1988

**Mr. Allen Beinke
Executive Director
Texas Water Commission
P. O. Box 13087
Austin, Texas 78711**

LO-88-95

Dear Mr. Beinke:

This letter is in response to Executive Director Larry R. Soward's request dated August 12, 1987. We regret the delay in responding to the request. The letter was transferred to the Environmental Division, and there was confusion about who would ultimately respond to the letter. The environmental division prepared the following responses to Mr. Soward's questions:

Question No. 1: Is the resolution adopted by the Board, declaring void the Contract of Sale for the water system, legally sufficient to effectuate the voiding of the Contract of Sale, without further action by the members, or the Board, of Log Cabin?

Response: The resolution adopted by Log Cabin's Board may not be "legally sufficient" to effectuate the voiding of the contract of sale to Log Cabin unless a Board resolution was voted upon by the Association's members. Article 1396-2.14 of the Non-Profit Corporation Act empowers a board of directors to manage the affairs of a corporation. However, article 1396-5.09 governs the sale, lease, or exchange of "all, or substantially all" of the property or assets of such a corporation. While the voiding of the contract in this case is perhaps not technically a "sale, lease, or exchange," it would seem that this is the type of transfer contemplated by this article. It appears from the fact that the association began dissolution proceedings upon transfer of the water system back to Areaco, that the water system constituted "all, or substantially all" of the property and assets of the corporation.

Subsection (1) of article 1396-5.09 provides that where there are members having voting rights, the board must adopt a resolution recommending such transfer and obtain 2/3 vote of the members present at a meeting called to consider such transfer. Where there are no members with voting rights, however, such transfer is authorized upon the vote of a majority of the directors. From the bylaws attached to Mr. Soward's inquiry, it appears that Log Cabin has voting members. See Bylaws, Article IV. Although the bylaws clearly allow the members to vote for officers and directors, the voting rights of members do not appear to be restricted to such elections. We were given no information indicating that the members met and voted on the transfer of the water system back to Areaco.

Question No. 2: The resolution adopted by the Board dissolving Log Cabin may not be legally sufficient to effectuate dissolution unless a 2/3 vote of the members was obtained by the Board. Article 1396-6.01 of the Act provides that where there are members with voting rights, the board of directors must adopt a resolution recommending dissolution which must then be voted on by 2/3 of the members present at a meeting called to consider dissolution. Where there are no voting members, dissolution is authorized by the adoption of a resolution to dissolve by a majority of the directors. See discussion in number 1 above regarding whether Log Cabin has members with general voting rights. Again, we were not told that the members met or voted on dissolution.

Response: The resolution adopted by the Board dissolving Log Cabin may not be legally sufficient to effectuate dissolution unless a 2/3 vote of the members was obtained by the Board. Article 1396-6.01 of the Act provides that where there are members with voting rights, the board of directors must adopt a resolution recommending dissolution which must then be voted on by 2/3 of the members present at a meeting called to consider dissolution. Where there are no voting members, dissolution is authorized by the adoption of a resolution to dissolve by a majority of the directors. See discussion in number 1 above regarding whether Log Cabin has members with general voting rights. Again, we were not told that the members met or voted on dissolution.

Question No. 3: Article X, § 2(b) of Log Cabin's bylaws clearly requires that the president be present along with six members of the board to constitute a quorum to transact business. If Log Cabin's decision to transfer the

water system back to Areaco was made in the president's absence, then the decision was made without a quorum. However, nothing in Article X, § 2(b) or elsewhere in the bylaws appears to require or even allow the president to approve of or sign a resolution effecting the transfer. He may have been present but may not have given his approval for the transfer. The information we received does not indicate whether he was present or not. Article 1396-2.17 of the Non-Profit Corporation Act provides that the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board, unless a greater number is required by the articles of incorporation or the bylaws. Here, neither the bylaws nor the articles require a greater number. A majority of the directors did sign the resolution voiding the contract of sale.

Response: Article X, § 2(b) of Log Cabin's bylaws clearly require that the president be present along with six members of the board to constitute a quorum to transact business. If Log Cabin's decision to transfer the water system back to Areaco was made in the president's absence, then the decision was made without a quorum. However, nothing in Article X, § 2(b) or elsewhere in the bylaws appears to require or even allow the president to approve of or sign a resolution effecting the transfer. He may have been present but may not have given his approval for the transfer. The information we received does not indicate whether he was present or not. Article 1396-2.17 of the Non-Profit Corporation Act provides that the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board, unless a greater number is required by the articles of incorporation or the bylaws. Here, neither the bylaws nor the articles require a greater number. A majority of the directors did sign the resolution voiding the contract of sale.

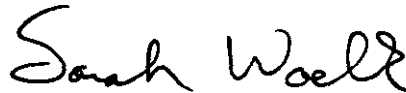
Question No. 4: Article 1396-6.05 requires Log Cabin to file Articles of Dissolution with the Secretary of State. The corporation ceases to exist, except for certain purposes specified in the articles, upon the issuance of a certificate of dissolution by the Secretary of State.

Response: Article 1396-6.05 requires Log Cabin to file Articles of Dissolution with the Secretary of State. The corporation ceases to exist, except for certain purposes specified in the articles, upon the issuance of a certificate of dissolution by the Secretary of State.

Mr. Allen Beinke
August 8, 1988
Page 4

The environmental division also pointed out that article 1396-2.03 provides that no act or transfer of real or personal property by a non-profit corporation shall be invalid by reason that the act or transfer was ultra vires except that such claim may be asserted (1) by a member against the corporation to enjoin the act or transfer; (2) by the corporation against incumbent or former officers or directors; or (3) in a proceeding by the Attorney General to dissolve the corporation, to enjoin unauthorized acts, or to enforce divestment of real property acquired or held contrary to state laws.

Very truly yours,



Sarah Woelk
Assistant Attorney General
Opinion Committee

SW/bc

3307
3809
3939